



Comptroller General
of the United States
Washington, D.C. 20548

147532

Decision

Matter of: GE American Communications, Inc.
File: B-248575; B-248576; B-248577; B-248578;
B-248579; B-248580
Date: September 4, 1992

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Corporation, an interested party,
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Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest against short delivery schedule in solicitation for satellite communications services is denied where the record demonstrates that the schedule reflects the agency's minimum needs, which are based on national security.
2. Where protester cannot meet procuring agency's required delivery schedule, protester is not an interested party to challenge alleged procedural irregularities in procurement of satellite communications services.

DECISION

GE American Communications, Inc. (GE) protests that the Defense Information Systems Agency, Defense Commercial Communications Office (DECCO), did not follow applicable procedures in conducting procurements under solicitation Nos. DA03FEB920077, DA03FEB920078, DA03FEB920079, DA03FEB920080, DA03FEB920081, and DA03FEB920082, issued for satellite communications services between Fort Bragg, North Carolina, and six other military installations. GE also protests that the delivery date required for these services, which GE states it could not meet, did not reflect the agency's minimum needs.

We deny the protests in part and dismiss them in part.

The six solicitations, called inquiries, were issued by DECCO on April 20, 1992, to three vendors, including the protester and GTE Government Services Corporation, which were known to be capable of providing the satellite

services. As issued, the inquiries requested that service begin on May 4, but noted that the delivery date was a desired date only. The vendors were requested to submit a quotation providing the rate charged for each element of service and to propose a new delivery schedule if they were unable to meet the May 4 desired service date. The solicitations provided that the award would be made to the responsible vendor whose offer conforming to the inquiry was most advantageous to the government, price and other factors considered.

GE and GTE submitted quotations by the April 24 due date. In their quotations, both offerors took exception to the May 4 service date, GE stating that it could provide service within 83 days after receiving an order (ARO) to do so, and GTE indicating that it could provide service sometime between May 29 and June 15. The contracting officer subsequently contacted the Chief, Crisis Management CINC Support Directorate, for the Defense Information Systems Agency, who serves as the project officer for the national security network which would use the satellite service, to inform him that no offeror could meet the desired service date. The Chief responded that the satellite services supported a critical national level command and control system and that service was required no later than June 1. He also noted that additional funding would be made available to meet the expedited delivery date. On April 27, based on this information, the contracting officer amended the evaluation criteria in the solicitations to provide that award would be made on the basis of the best service date offered, cost and other technical factors considered. Revised responses were due by April 28 at 2 p.m. Shortly before responses were due, GE submitted a letter to the contracting officer complaining that the new award criteria made it impossible to respond to the solicitation and requesting that the original evaluation criteria be reinstated. GE also submitted a revised quotation in which it changed its proposed service date from 83 days ARO to 75 days ARO.

In response, the contracting officer amended the solicitation to provide that award would be based on three factors in descending order of importance: service date, technical, and cost. The amendment also established June 1 as the required service date and requested offers by April 30. Following this last amendment, GE submitted a protest to the agency essentially complaining that the short service date precluded the firm from submitting an offer. GE asked that DECCO establish price as the basis for award and revise the solicitations to require delivery or service 30 days ARO or "contractor best effort," or 90 days ARO. In response, the contracting officer amended the solicitations to provide that temporary satellite facilities would be permitted for a

period of 90 days if necessary to meet the service date. The amendment, however, reiterated that June 1 was the required service date.

On May 4, GE and GTE responded to the revised solicitations. While GE submitted the low price, GE also stated that it would not supply the services until 75 days ARO. GTE offered to provide the services by the June 1 deadline.

After GE's quotation was rejected because it did not meet the required service date and GE's agency-level protest was denied, GE submitted its protest to our Office. GE complains that: (1) the June 1 service date did not reflect the agency's minimum needs; (2) in revising the award criteria to emphasize delivery date, the agency substantially revised the solicitations and thus was required to cancel the solicitations and issue new ones rather than amend the solicitations; (3) the agency was not permitted to change the award criteria; and (4) the agency was conducting a de facto sole source procurement and failed to issue a justification and approval to do so.

GE first complains that DECCO did not in fact require the satellite communications services by June 1. In response, DECCO explains that the services are for the BEAU Network, which provides communications services for command and control of military forces and execution of classified national security missions, which are critical to national security. The agency states that the services had to be provided no later than June 1, because on that date the current contract for the services expired, and if service was not obtained, command and control communications would be disrupted. The agency acknowledges that then current contractor had a tariff on file with the Federal Communications Commission (FCC) to provide these services and that this tariff was incorporated into its contract with DECCO. The agency argues, however, that even if continued service is available under that tariff, the service requested under the instant solicitations represents a substantial expansion of connectivity at one of the bases which is not covered by the tariff, and that without implementation of this additional connectivity the processing and analysis of critical intelligence would have been severely curtailed on June 1.

GE does not question that DECCO needs the services for national security, or that the current contract expired on June 1. Instead, in protesting that the agency did not need the services by June 1, GE asks why, if the delivery date was so important, the initial solicitations did not specify the delivery date as the most important award criterion. GE also points out that the request for service by the using activity was issued on February 3, but the procuring agency

did not issue the solicitations until April 20. GE maintains that this delay in issuing the solicitations is clear evidence that the agency did not in fact need expedited delivery. Finally, GE argues that even though the incumbent's contract expired on June 1, since the services are covered by a tariff, the FCC would not permit the incumbent to withdraw a service that is vital to national security.

We find that the agency has reasonably demonstrated that the June 1 delivery date was a legitimate requirement. The fact that the agency initially issued the solicitations with price as the primary award factor and the fact that the procuring agency experienced a delay in issuing them do not themselves establish that the services were not needed by June 1. Although GTE has a tariff on file for the current services and could be required to perform services covered by that tariff, the tariff does not cover all the services required by the protested solicitations. Until June 1, the National Security Agency (NSA) provided processing capability at Fort Meade, Maryland, for the analysis of national security information. NSA, however, informed the agency that as of June 1 it would terminate that processing function. As a result, the service requested under the protested solicitations substantially expanded connectivity at Fort Bragg, North Carolina, to account for the transfer of these services. The protested solicitations also expand service to new locations. GE does not dispute that agency's position that without implementation of the new services by June 1, the processing and analysis of critical intelligence would have been severely curtailed and as a result, national security would be compromised. Finally, the fact that only one firm can meet the delivery requirement does not establish that the requirement is not related to the agency's minimum needs. See Microwave Radio Corp., B-227962, Sept. 21, 1987, 87-2 CPD ¶ 288. Accordingly, we deny GE's protest that the June 1 service date did not reflect the agency's minimum needs.

As noted above, GE raised as a separate issue its contention that the agency could not change the award criteria in the solicitations once they were issued. This argument is without merit since the award criteria merely reflect the agency's requirements; given our conclusion that the agency's requirement was for a June 1 delivery date, the agency necessarily could amend the evaluation criteria to accurately reflect its needs.

Since we have concluded that the June 1 delivery date reflected DECCO's minimum needs, and since GE admits that it could meet that date, GE is not an interested party to protest the remaining issues it raises since it would not be in line for award even if its protest on one of those issues were sustained. See Touchtone Textiles, Inc., B-243912, July 24, 1991, 91-2 CPD ¶ 89. Accordingly, the remaining issues in GE's protests are dismissed.

The protests are denied in part and dismissed in part.



for James F. Hinchman
General Counsel